

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ROBERT MERLE PRATT,

Petitioner,

vs.

PEOPLE OF THE STATE OF SOUTH
DAKOTA; BOB DOOLEY; and THE
ATTORNEY GENERAL OF THE STATE OF
SOUTH DAKOTA,

Respondents.

4:17-CV-04115-LLP

ORDER

Petitioner Robert Merle Pratt has filed what he characterizes as a motion under Fed. R. Civ. P. 60(b)(5). Under Federal Rule of Civil Procedure 60(b)(5), a court can provide a party with relief from a final judgment if “the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5). However, inmates may not bypass the authorization requirement for filing a second or successive motion under 28 U.S.C. § 2254 “by purporting to invoke some other procedure.” *United States v. Lambros*, 404 F.3d 1034, 1036 (8th Cir.2005) (quoting *United States v. Patton*, 309 F.3d 1093 (9th Cir.2002)).

The Eighth Circuit Court of Appeals has encouraged district courts to conduct an inquiry into whether a purported Rule 60(b) motion following the dismissal of a habeas petition is actually a second or successive collateral attack under either 28 U.S.C. § 2254 or § 2255. *Boyd v. United States*, 304 F.3d 813 (2002). If the court determines the Rule 60(b) motion is a second or

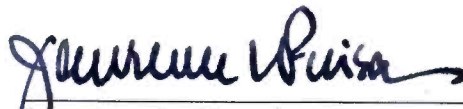
successive habeas petition, the district court should dismiss it for failure to obtain authorization from the Court of Appeals, or in its discretion transfer the purported Rule 60(b) motion to the Court of Appeals. *Id.* The petitioner may then either appeal the dismissal of the motion or, if transferred by the district court, await the action of the Court of Appeals. *Id.*

The Court finds that Pratt's Rule 60(b) motion must be construed as a petition under § 2254. He is attempting to file successive motions for post-conviction relief. Having failed to obtain the requisite certificate of appealability from the Court of Appeals, his motion must be denied. Accordingly,

IT IS ORDERED that Petitioner's Rule 60(b) motion, Doc. 35, is DENIED.

DATED June 20th, 2018.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
MATTHEW W. THELEN, CLERK

BY: _____
(SEAL) DEPUTY